IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SECOND APPEAL NO. 521 OF 1983

1. Shri Vyenkatesh Pradyumnacharya Warkhedkar, since deceased by his heirs:

1(a) Bhimacharya (Bhimsen) V. Balacharya Warkhedkar, Residing at H.No. 2300,Datta-Ghat, Pandharpur,District-Solapur

2. Govind Devaba Nimbalkar).**Appellants**

Versus

1. Maharashtra State

2. Ramanath Jha, in the capacity of the Deputy Collector, Pandharpur,Sub-Division, Pandharpur, Executive Officer, Temple Committee, Pandharpur and Adminsitrator of Pandharpur Municipal Council,Pandharpur

3. Narayan Dattatraya Badave.
4. Manohar Vithal Badave.).**Respondents**

Shri Bheemacharya Warkhedkar, Appellant No.1(a) in person.
Shri Gawade, AGP for Respondent No.1 and 2.
Shri S.G. Surana, advocate for Respondent No.2(iii).
Shri. S.M. Mhamane, advocate for Respondent Nos. 3 and 4.

CORAM: A.S. OKA, J.

DATE : 23RD JULY, 2004 AND

26TH JULY, 2004.

ORAL JUDGEMENT:-

1. This Court admitted this Second Appeal on 11th October 1983 by passing following order :

> . "The question involved in this appeal relates to the interpretation of the decree passed by the Civil Court in a suit in which the Government was a party. By that decree the plaintiff's rights for himself and for Sanathan Dharma under articles 25, 26 and 29 of the Constitution of India are specifically recognised and upheld by the Court. The question is as to whether the plaintiff's personal right to receive Dakshina from any devotee who wants to enter the temple can be said not to have been recognised by the said decree. The question is a substantial question of law and hence the appeal is admitted. "

2. I have heard the Appellant No. 1(a) who has appeared in person. I heard the counsel appearing for the Respondents. I have also perused the synopsis filed by Appellant No. 1(a). I have also read the written submissions filed by the Appellant

No. 1(a) on 15th July, 2004.

3. Though Second Appeal No. 306 of 1992 is placed alongwith this Second Appeal, on the request made by the party in person, the said Second Appeal No. 306 of 1992 will be heard separately.

4. With a view to appreciate the submissions made on behalf of the parties, it is necessary to briefly refer to the facts of the case. This Second Appeal is in respect of ancient temple of Vithal Rukamini at Pandharpur, which is a subject matter of various litigations in this Court right from the year 1882. The Second Appeal arises out of regular Civil Suit No. 969 of 1981 filed by the appellants. The suit is filed by invoking the provisions of Order 1 Rule 8 of the Code of Civil Procedure, 1908 (hereinafter referred to as the "said Code").

5. The case of the Appellants is based on the decree passed in Regular Civil suit No. 562 of 1980. Therefore, with a view to understand the controversy between the parties it will be necessary to refer to the Plaint Regular Civil Suit No. 562 of 1980. The

said suit was filed by the Appellant No.1. The prayer in the said suit was that as citizen of India and as a member of the ancient Vaidik religion and Vaishnav Sampradaya (sect), the Appellant no.1 has right to perform Pooja in the Vithal Rukmini Temple. The prayer further says that the Appellant no.1 has right to demand 'Dakshina' (monetary gift to a Brahmin) performing religious ceremonies in the said temple. The Appellant also claimed to be the leader of the ancient Vaidhik Dharma and Vaishnav Sampradaya. He prayed that non-hindus should be prevented from entering the said temple. A specific prayer is made that the Appellant no.1 had right to manage the said temple in view of the rights conferred by Article 25, 26 and 29 of the Constitution of India and especially Article 26 of the Constitution of India. The Appellant no.1 claimed the said rights as his fundamental rights. The consequential prayer for perpetual injunction was incorporated in the said suit. In the said suit reference is made to the provisions of Pandharpur Temples Act, 1973 (hereinafter referred to as the said Act of 1973). The Appellant No.1 contended in the said suit that the provisions of the said act

have been partially implemented by abolishing the rights of Badves, Sevadharis and Utpats. As regards performance of Pooja, the management of the said Vithal Temple has been entrusted to Vishnu Mandir committee. The Deputy Collector, Pandharpur was impleaded in the said suit as the executive officer of the Vithal Mandir Committee and as the representative of the State of Maharashtara. He stated in the plaint that the Badves, Sevadharis and Utpats have filed civil suits for protection of their alleged rights and the said suits are pending. A reference is made in the plaint to the earlier Civil Suit No. 296 of 1970 filed by him. The said suit was initially filed in the court of Civil Judge, Junior Division and was transferred to the Court of Civil Judge, Senior Division and was renumbered as Regular Civil Suit No. 1092 of 1974. A contention is raised that though the suit is dismissed, Issue No.6 as regards the right of the Appellant no.1 under Article 25, 26 and 29 of the Constitution of India was decided in the favour of the Appellant No.1. An appeal filed against the judgement and decree passed in the said suit was also dismissed and the Appellate Court held that the suit was not maintainable on

account of failure to serve the notice Under section 80 of the said Code. A contention is raised that finding on issue no.6 in the said suit has been confirmed by the District court.

6. In the said suit Civil Suit No. 562 of 1980 a joint pursis signed by both the parties was filed. The said pursis is signed by the Plaintiff and the District Government Pleader representing the Defendant in the suit. In the said pursis, it is stated that a declaration be granted in favour of the Plaintiff in the said suit as regards the rights conferred on the Plaintiff by Article 25, 26 and 29 of the Constitution of India in his personal capacity as well as in capacity as the representative of the ancient Vaidik religion and Vaishnav (Bhagwat) Sampradaya. It was stated that declaration as regards the consequential rights under Article 25, 26 and 29 of the Constitution of India be granted. It was specifically recorded in the said pursis that Plaintiff in the said suit (the Appellant No.1 herein) has given up his prayer for injunction for time being and he will make the said prayer, if occasion arises. The said suit was ordered to be

disposed of in terms of the said pursis and accordingly decree was drawn in terms of the said pursis and a declaration was granted in favour of the Appellant No. 1 herein in his individual capacity as well as in his capacity as representative of ancient Hindu religion and Vaishnav Sampradaya that he is entitled to rights under Article 25, 26 and 29 of the Constitution of India as well as incidental rights under the said articles. It is to be noted here that the Plaintiff in the said suit did not seek leave of the court to file a fresh suit for decree of injunction and the prayer for perpetual injunction was given up by stating that it was being given up for time being. In this behalf, it is necessary to refer to the order passed by the Learned Trial Judge, Exhibit 1 in the said suit. The Learned Judge passed the following order

> "The common pursis of the parties at exhibit 64 is recorded in pursuance of that common pursis, the Plaintiffs suit for declaration deserves to be allowed and for perpetual injunction deserves to be dismissed, with no order as to costs. Hence I hereby allow the

> Plaintiff's suit partly with no order as to costs. It is hereby declared that the Plaintiff in his individual capacity and as representative of Sanatan Vaidik Dharma and Vaishnava Sampradaya has fundamental rights guaranteed under Articles 25, 26 and 29 of the Constitution of India and other rights ancillary thereto. The Plaintiff's claim for perpetual injunction sought hereby stands dismissed. "

7. This takes me to the facts of the present suit from which the Second Appeal arises. In the present suit (Regular Civil suit No. 969 of 1981) the prayer of the Appellants is based on decree passed in Regular Civil Suit No. 562 of 1980. The case made out in the Plaint will have to be also referred to. The Appellant No.1 is the Plaintiff No.1 who was the Plaintiff in the earlier suit being Regular Civil Suit No. 562 of 1980. It is stated in the plaint that for executing the decree passed in R.C.S. No. 562 of 1980, the execution proceedings being Regular Darkhast No. 125 of 1981 was filed by the Plaintiff. The said execution proceedings was filed when the

Chief Executive Officer and the Sub-Divisional Officer issued passes for entry in the Vithal Rukmini Temple to those who have undergone a family planning surgery. It is stated in the plaint that though the Ganpati Temple and other temples near the Vithal Temple are not a part of the Town Planning Scheme, work of demolition of the said temples has been started. It is further stated in the plaint that there are houses and shops held by Badves, Sevadharis and Utpats for generations which are close to the Vithal Temple and the said houses and shops are also sought to be illegally demolished. The contention is raised that the said action of demolition offends the Constitutional rights of the Appellants and it is the duty of the State Government to protect the said houses and shops. Thereafter, a prayer was made in the suit on the basis of decree passed in Regular Civil suit No. 562 of 1980 that the other temples near the Vithal Temple and houses of Sevadharis, Badves and Utpats near the temple should not be demolished and without the consent of the Plaintiffs the entry passes to the Vithal Rukmini Temple shall not be issued to any person. Thus, the prayer in the suit is for decree of perpetual injunction on the

basis of decree passed in earlier suit No. 562 of 1980.

8. The suit was resisted by Original Defendant No. 1 and 2 by filing their written Statements. The contention of Respondents No.1 and 2 is that the Appellants have fundamental right under the Constitution of India of ‘Darshan’ in Vithal Temple like any other citizen and they have no more other rights as no other rights are conferred on the Appellant no.1 by the decree passed in earlier Suit No. 562 of 1980. The Respondents No.1 and 2 stated that the right of the Appellants to have Darshan is not obstructed and the passes which are issued by the Respondents are not unlawfully issued. A further contention is raised that all the properties mentioned in paragraph no. 4 of the plaint, i.e. the Temples, Shops and houses are acquired under the Town Planning Act. The Town Planning Scheme-I of Pandharpur was finalised by the competent authority by following the legal procedure laid down under the said Act. Being aggrieved by the scheme, aggrieved parties preferred the appeals and the said appeals have been decided by the Tribunal appointed under the

Act and the scheme has become final which is required to be implemented by the Planning Authority. It was pointed out that the Appellants had filed a Petition in this court for challenging the said Town Planning Scheme and the same was rejected by this Court. The said Respondents also relied upon Section 149 of the Maharashtra Regional and Town Planning Act, 1966. It is stated that under the scheme, the Vithal Rukmini Temple is not acquired and it is kept as it is.

9. The Respondents No. 3 and 4 filed a separate written Statement and contended that the Civil Court had no jurisdiction to entertain and try the suit. A contention is raised that different temples referred to in the plaint are being managed by different trusts which are duly registered under the Bombay Public Trusts Act, 1950 and the concerned trusts have the right of management of the respective Temples. It is pointed out that the Trustees of the different trusts are not parties to the suit.

10. The Appellant No.1 led his oral evidence and both the parties produced documentary evidence on record. The Trial court framed various issues and

held that the suit was barred under section 149 of the Maharashtra Regional and Town Planning Act, 1966 and the suit in the present form was not tenable. An Appeal was preferred by the Appellants against the Judgement and Decree of the Trial Court and the said Appeal was dismissed. Therefore, the present Second Appeal has been preferred by the Appellants.

11. Apart from making oral submissions, the Appellant No. 1(a) has filed written submissions on 15th July, 2004 and during the course of dictation of the Judgement, he has submitted additional written arguments. The contentions raised by the Appellants are diverse. The main reliance is placed by the Appellants on the decree passed in Regular Civil Suit No. 562 of 1980. The contentions raised by the Appellants can be summarised in nutshell as under :

(a) The right to demand Dakshina from the devotees visiting the temple was already set out in Regular Civil Suit No. 562 of 1980. The said right in the matter of Dakshina being religious matter is part of the rights conferred by article 26 of the Constitution of

India and a declaration as regards the said right is already granted in earlier decree.

(b) Every time the Dakshina is to be given and taken by chanting separate mantras and no religious activity is fulfilled unless Dakshina is paid and accepted. And unless Dakshina is paid and accepted, one cannot acquire "Punya" and work which is done without proper Dakshina is to be treated wrong or ‘Tamas’ work. Reliance is place on Bhagwad Gita in support of this contention. As Dakshina is unavaoidable part of each religious activity, it is a part of the personal right conferred on the Appellant No.1(a) under the Article 25 of the Constitution of India.

(c) The decree passed in Regular Civil Suit No. 562 of 1980 confers the personal right on the Appellant No.1(a) to receive Dakshina as it is his personal right.

(d) It is stated that even assuming for

the sake of arguments that the said right is not personally presently available to Appellant No.1(a), it may be stated that the said right is available in his capacity as representative of the ancient Vedic religion.

(e) It is submitted that whenever the Devotees will seek to give Dakshina to the Appellant No.1(a), he will be entitled to receive the same. It is submitted that the right to demand Dakshina could be restricted by fixing the mode of deciding the propriety of the quantity of Dakshina taking into consideration the capacity of the devotees and nature of religious activity.

(f) The rights claimed by the Appellants in the suit are already upheld in the earlier suit and as the Appellant No.1(a) had not pressed for perpetual injunction in the earlier suit, this suit seeking decree of perpetual injunction on the basis of declaration of rights made in the earlier suit is maintainable. He submitted that as the decree

for injunction is not passed in earlier suit, if any action is taken in contravention of the rights of the Appellants which are already declared in the said suit, execution proceedings cannot be filed and the grievance will have to be made by filing a separate suit as done by the Appellants.

(g) It is submitted that the Respondents have no right to demolish the said temples and houses and shops as referred to in the plaint. He submitted that Section 149 the Maharashtra Regional and Town Planning Act, 1966 was not attracted. In the alternative, he submitted that a reference ought have been to made to this Court under Section 113 of the said Code.

(h) It is submitted that as prayer for perpetual injunction is given up by Appellant No.1(a) in earlier suit, he is entitled to ask for the same relief at the later stage by filing a separate suit. It is submitted that though permission to file a fresh suit is not specifically mentioned in the body of the

order passed below Exhibit 1 in earlier suit, it is to be presumed that such permission is granted in view of the language used in joint pursis on the basis of which decree was passed in the said earlier suit.

(i) A contention is raised that the provisions of the Pandharpur Temples Act, 1973 are void as per article 13(2) of the Constitution of India being violative of the Appellants' rights under Article 25, 26 and 29 of the Constitution of India. It is pointed out that some of the important sections under the said act of 1973 have not been brought into force.

(j) The Appellants relied upon the principle of estopel on the ground that from the date of the filling of the pursis no objection has been raised to the decree passed in the earlier suit. The said objection was not raised in regular in Darkhast No. 125 of 1981 and infact in execution proceedings,police protection was ordered to

be given for enforcing the rights of the Appellants which were recognised by the earlier decree.

(k) Reliance is placed on Article 26 of the Constitution of India which gives the right to the religious institutions to manage its own affairs in the matter of religion. It is contended that the rights of the Appellant No.1(a) of Darshan and Pooja are part of the right conferred by Article 26 of the Constitution of India and the Appellants have the right to manage and conduct the affairs of the Vithal Temple in the matter of religion.

(l) As regards demolishing the temples, houses and shops, no notice have been issued to the concerned persons.

12. The Learned Counsel appearing for the Respondent No.1 and 2 submitted that the suit was barred by the principles of res-judicata. He submitted that in the earlier suit, the State Government was not a party and the committee

constituted under the said act of 1973 was also not a party. He therefore submitted that the decree passed in earlier suit is not binding on the State Government and the Temple Committee.

13. Learned Counsel appearing for the Respondent No.2(iii) relied upon the provisions of the said act of 1973 and pointed out that in the said act of 1973, the rights of management by the Vithal Temple are conferred on the Committee constituted under the said statute. He pointed out that the Appellants have no right to raise objection to the action of the Committee of issuing passes to deserving persons. He submitted that the judgement and decree passed by the Courts below needs no interference.

14. In the additional written submissions filed by the Appellant No.1(a) today, he has submitted that the Sub-Divisional Officer was impleaded in the suit in his capacity as the Executive Officer of the Temple Committee who had a right to represent Temple Committee inview of Section 23(a) of the said Act of 1973 and that he was also an officer of the State Government. He submitted that the said objection was

not taken in the courts below and therefore cannot be permitted to be raised for the first time in Second Appeal. He submitted that his written submissions given in the courts below are not considered and therefore case for interference is made out.

15. The first question which has to be considered is as to what is the nature and the extent of the rights available to the Appellants and in particular Appellant NO.1(a) on the basis of Decree passed in Regular Civil Suit No. 562 of 1980. It is, therefore, necessary to refer to the plaint in earlier suit. If the averments made in the said suit are considered, it is clear that it is not the case made out that the Vithal Rukmini Temple is established by the ancient Vaidik religion or Vaishnav Sampradaya. No case is made out that that the temple in question is maintained by the said Sampradayas. The paragraph 3 of the plaint refers to the rights in guaranteed and conferred by the relevant Articles of the Constitution of India. In paragraph 5 of the plaint, it is specifically stated that the rights of the management of the temple have been conferred on the Temple Committee established

under the said act of 1973. It is pertinent to note that in the suit there is no challenge to the validity of the said act of 1973 and in the present suit, which is the subject matter of the Second Appeal also there is no such challenge. In paragraph 8 of the plaint, a contention is raised that a right is available to Badves and disciples of the Appellant No.1(a) to have preferential right to Darshan between 9 p.m. to 6 a.m. and the said right is based on Article 26 of the Constitution of India. A Reliance is placed on the judgement in Regular Civil Suit No. 1092 of 1974. As pointed earlier, the said earlier suit i.e. R.C.S. no. 1092 of 1974 was dismissed by the Trial Court and the dismissal is confirmed by the Appellate Court. In paragraph no. 10 of the plaint it is stated that even assuming that the said act of 1973 is valid and legal, the Plaintiff has right to perform Pooja and to perform various religious ceremonies and to manage the temple as per the ancient Vedic religion and Vaishnav Sampradaya. Therefore it is very apparent that in the earlier suit the Appellant No.1(a) did not object to the management of the Temple by the Committee appointed under the said Act of 1973. If order passed on

Exhibit 1 in the said suit is perused, it is very clear that the declaration is granted that the fundamental rights conferred by Article 25, 26 and 29 and ancillary rights are available to Plaintiff No.1(a) in his individual capacity as well as in his capacity as representative of the ancient Vedic religion and Vaishnav Sampradaya.

16. It is therefore to be noted that there is no declaration granted that the Temple is established and/or managed by either the ancient Vaidik religion and/or by the Vaishnav Sampradaya. The Decree does not disturb the applicability of the provisions of the said Act of 1973 and the rights and powers conferred on the committee established under the said Act of 1973 to manage the temple. It is also to be borne in mind that the subject matter of the earlier suit is only Vithal Rukmini Temple and the said suit was not filed as regards the other temples in the vicinity of the Vithal Rukmini Temple or as regards the houses and shops in the area of Vithal Rukmini Temple.

17. In this connection, reference will have to be

made to Article 25, 26 and 29 of the Constitution which reads as thus.

> **25. Freedom of conscience and free profession, practice and propagation of religion :**
>
> (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.
>
> (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law -
>
> (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
>
> (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a

public character to all classes and sections of Hindus.

Explanation I - The wearing and carrying of Kirpans shall be deemed to be included in the profession of Sikh religion.

Explanation II- In sub-clause (b) of clause (2) the reference shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

26. Freedom to manage religious affairs- Subject to public order, morality and health, every religious denomination or any section thereof shall have the right -

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in

matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.

29. Protection of interests of minorities: (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

18. Sub-Article 1 and Article 25 provides that the rights conferred by Article 25 are subject to public order, morality and health and to the other

provisions to this part. These rights conferred by Article 25 are subject to the other provisions of part III of the Constitution of India and the said rights are also subject to public order. The right conferred by sub-Article 1 of Article 25 are as regards freedom of conscience and the right to freely profess, practise and propagate religion.

19. It is to be noted here that a categorical statement has been made by Respondent No.1 and 2 in their written statement that the right of Appellant No.1(a) and the Appellant herein to enter the Vithal Rukmini Temple was never obstructed and the said right is available to the Appellants on par with any other citizen. For maintaining public order, some reasonable restrictions on entry are imposed by the committee appointed in the said act of 1973. Therefore, there is nothing on record to come to the conclusion that the rights conferred on the Appellants under Article 25 of the Constitution of India have been infringed. If some reasonable restriction is imposed on the entry to the temple by the Committee for the purposes of securing public order, it cannot offend the rights available to the

Appellants under Article 25 of the Constitution of India.

20. This takes me to the rights conferred by Article 26 of the Constitution of India. The right under Clause (a) of the Article 26 is to establish and maintain institutions for religious and charitable purposes and to manage its own affairs in the matter of religion. As stated earlier, even in the earlier suit, the Appellant No.1(a) did not claim that the institution namely the Vithal Rukmini Temple is established and managed either by the Hindu Vaidik Religion or by Vaishnav Sampradaya which the Appellants claim to represent. Once institution is established for religious or charitable purpose by any religious denomination or any sect thereof, the article confers the right to manage its own affairs in the matters of religion. As stated earlier, in view of the fact that the institution of Vithal Rukmini Temple was not proved to be established or managed either by the Appellants or by the sects or Sampradaya which they allegedly represent, the Appellants cannot claim to have a right to manage the affairs of the Temple. A contention is raised that

even the said act of 1973 recognised the fact that the Temple belongs to Vaishnav Sampraday. Reliance is placed on Schedule-A which describes the daily or nitya services in temple of god Vithal. Even assuming that Schedule -A recognises that a particular religious ceremony propounded by Vaishnav Sampradaya is made part of the daily or nitya services in temple, that by itself does not amount to saying that the temples is established and/or managed by the Vaishnav Sampradaya.

21. So far as the decree passed in earlier Suit No. 562 of 1980 is concerned, though it refers to the rights of the Appellants under Article 26 of the Constitution of India, the said rights will have to be interpreted in the context of the averments made in the plaint in the said suit. If it is not contended in the earlier suit that the temple is established and/or managed by any particular sect, mere reference to Article 26 of the operative part of the decree will not give to any sect or Sampradaya represented by Appellant No.1(a) to administer or manage the temple.

22. In so far as the article 29 of the Constitution of India is concerned, it deals with protection of interests of minority. On plain reading of the said article, the same does not confer any right on the Appellants with reference to management and administration of the temple in question. A contention is raised that Article 25, 26 and 29 will have to be read together and if the same are read together, it becomes apparent that a right is conferred on the Appellants to protect the traditions and culture of the sects which he represents. However, that is not the pleading in the present suit as well as in the earlier suit. In order to succeed in the present suit it was necessary for the Appellants to establish that the rights conferred under Article 25, 26 and 29 on them which are recognised by the decree passed in earlier suit have been infringed so as to give them cause of action to claim perpetual injunction in the present suit.

23. In the earlier suit, no rights are claimed save and except with reference to Vithal Rukmini Temple. A case is made out in the plaint in the

present suit that the said temple, houses and shops held by Badves, Sevadharis and Utpats should not be demolished. In the present suit, the Appellants are not claiming any other rights except the rights conferred by the Decree passed in regular Civil Suit No. 562 of 1980. As no rights are claimed in the earlier suit as regards the other temples, houses and shops etc, the Appellants are not entitled to any relief as regards the said properties.

24. A grievance is made that the Respondents have issued passes to individuals by which preference will be given to the said individuals for the Darshan of the deity. It is very difficult to understand as to how by issuance of such passes, the fundamental rights conferred on the Appellants are affected or infringed. The Appellants, as said earlier have no right to administer or manage the Vithal Rukmini Temple. By issuing passes to certain individuals for entering the temple, the rights of the Appellants to have entry in the temple are not obstructed. No such case is made out in the oral evidence. Therefore no perpetual injunction can be granted in that behalf. It must be noted that the prayer in the suit is that,

without consent of the Appellants passes shall not be issued. As the appellants have no right to manage or administer the temple, they cannot usurp the powers of the Temple Committee and say that passes cannot be issued without their consent.

25. Therefore, on plain reading of the plaint in Regular Civil suit No. 562 of 1980, the pursis filed by the parties and the Decree passed therein, it is very clear that the Appellants are not entitled to claim the rights including right to receive Dakshina which they have purported to claim by filing the present suit.

26. There are various other objections to the maintainability of the present suit filed by the Appellants. The said objections are based on principle res-judicata. Another objection raised is that after relinquishing the prayer for perpetual injunction in earlier suit, the Plaintiff cannot make the same prayer in the subsequent suit. Instead of going into the said technical objections, as Appellant No. 1(a) appeared in person, I have examined in detail whether the Appellants have the

rights which they claim. As I have come to the conclusion that the Appellants have failed to establish the existence of any right in their favour entitling them to Decree of perpetual injunction as prayed, I am not referring to the other aspects of the matter.

26. Before parting with the Judgment, I must mention that Appellant No.1(a) who has appeared in person has argued the case very intelligently and has taken much pains to reduce his submissions in writing.

27. In view of the foregoing discussion, there is no merit in the Second Appeal and the same is dismissed. There will be no order as to costs.

28. At this stage, Appellant No.1(a) seeks leave to prefer the Appeal to the Supreme Court. Considering the merits of the case, the prayer is refused.

. C.C. expedited.

Sd/-

JUDGE